INITED	STA	TES	DISTRICT	COURT

EASTERN DISTRICT OF TEXAS

JEREMIAH PIER PILOT,	§	
Plaintiff,		
versus	8 8	CIVIL ACTION NO. 1:18-CV-191
STEVEN EDWARDS, et al.,	8 8	
Defendants.	8 §	

MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Jeremiah Pier Pilot, an inmate confined at the Michael Unit, proceeding *pro se*, brought this lawsuit pursuant to 42 U.S.C. § 1983 against Steven Edwards and Kimpton Lewis.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends granting the defendants' motion for summary judgment to the extent it seeks dismissal of the claims against the defendants in their official capacities. The Magistrate Judge also recommends denying the motion for summary judgment in all other respects.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. The defendants filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the defendants' objections are without merit.

The defendants contend that because plaintiff did not respond to their motion for summary judgment, the court is required to accept the facts as stated in their motion as undisputed. However, the defendants fail to recognize that the plaintiff's version of events is drawn from his complaint which includes a declaration signed "under penalty of perjury [that] all facts presented

[therein] are true and correct." Therefore, in considering the motion for summary judgment, the Magistrate Judge properly credited the complaint as competent summary judgment evidence. *See Leggett v. Lafayette*, 608 F. App'x 187, 190 (5th Cir. 2015) (citing *Ion v. Chevron USA, Inc.*, 731 F.3d 379, 382 n.2 (5th Cir. 2013); *Nissho-Iwai Am. Corp. v. Kline*, 845 F.2d 1300, 1306-07 (5th Cri. 1988).

Here, genuine disputes of material fact exist regarding whether the force employed by the defendants was used in a good faith effort to maintain or restore discipline, or maliciously and sadistically for the very purpose of causing harm. Such genuine disputes of material fact preclude summary judgment. Therefore, the court overrules defendants' objections.

ORDER

Accordingly, the defendants' objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED**. It is

ORDERED that the defendants' motion for summary judgment is **GRANTED**, in part, and plaintiff's claims against them in their official capacities are **DISMISSED**. It is further

ORDERED that the defendants' motion for summary judgment is **DENIED** in all other respects.

SIGNED at Beaumont, Texas, this 18th day of September, 2019.

Marcia A. Crone

MARCIA A. CRONE

UNITED STATES DISTRICT JUDGE